

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DENNIS SARNO and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jersey City, NJ

*Docket No. 99-1978; Submitted on the Record;
Issued October 4, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established a recurrence of disability commencing August 7, 1997.

Appellant filed a traumatic injury claim (Form CA-1) alleging that on June 14, 1996 he sustained injury to his lower back while unloading a truck in the performance of duty. The Office of Workers' Compensation Programs accepted the claim for an aggravation of degenerative disc disease. Appellant returned to a limited-duty position on December 2, 1996 at four hours per day. On August 18, 1997 he filed a notice of recurrence of total disability (Form CA-2a) as of August 7, 1997.

By decision dated April 20, 1998, the Office denied appellant's claim for a recurrence of disability. In a decision dated February 22, 1999, an Office hearing representative affirmed the prior decision.

The Board finds that appellant has not established a recurrence of total disability commencing August 7, 1997.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light- or limited-duty position or the medical evidence establishes that such duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

Appellant asserts that his light-duty job was contrary to the job's stated restrictions. To the extent that appellant is alleging a change in the nature and extent of the light-duty job, he has

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

not provided a clear description of his light-duty job duties and to what extent they exceeded any stated restrictions. In the absence of probative evidence, the Board finds that appellant has not established a recurrence of disability based on changes in the light-duty job.

With respect to the medical evidence, appellant did not submit a reasoned medical opinion establishing a change in the nature and extent of an employment-related condition commencing August 7, 1997. In a form report dated August 18, 1997, Dr. Paul Vessa, an orthopedic surgeon, diagnosed discogenic disease and indicated that appellant was seen on August 8, 1997, but provided further explanation.² A note of the same date indicated that appellant had been out of work since August 8, 1997, but did not discuss a causal relationship between any disability and the employment injury.

In a report dated July 14, 1998, Dr. Vessa stated that appellant was initially seen on June 17, 1996 with complaints of low back pain resulting from his job duties over the prior two years. He provided a history of treatment and diagnosed degenerative disc disease at L3-S1, degenerative scoliosis at L2-3 and lumbar radiculopathy. Dr. Vessa opined that appellant's injuries "are causally related to the constant heavy lifting, bending and twisting which he had been performing on his job at the [employing establishment] for approximately two years."

The accepted claim in this case was a traumatic injury on June 14, 1996.³ To establish a recurrence of total disability commencing August 7, 1997, appellant must provide a reasoned medical opinion establishing a change in the nature and extent of the employment-related condition on that date. Dr. Vessa attributes appellant's condition to repetitive lifting, bending and twisting over the past two years but does not discuss disability commencing August 7, 1997 and does not provide a reasoned opinion relating any disability to the accepted employment injury, which was a temporary aggravation of appellant's degenerative disc disease.⁴

It is appellant's burden of proof to establish a recurrence of disability, and the Board finds that the evidence submitted is not sufficient in this case.

² The checking of a "yes" box in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship. *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

³ A traumatic injury is a condition caused by incidents within a single workday or shift; an occupational disease or illness is a condition produced over a period longer than a single workday. 20 C.F.R. § 10.5(q) and (ee).

⁴ A recurrence of disability includes a work stoppage caused by a spontaneous material change in the employment-related condition without an intervening injury. If the disability results from new exposure to work factors, an appropriate new claim should be filed; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

The decision of the Office of Workers' Compensation Programs dated February 22, 1999 is affirmed.

Dated, Washington, DC
October 4, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member